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(XVIII. E)

IN REPLY REFER TO:
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United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

APR 10 1987

Memorandum

Assistant Secretary, Land and Minerals Management

From: Director, Bureau of Land Management

Subject: Priority Collection on Oil and Gas Bonds

Attached is an issue paper addressing whether the Bureau of Land Management (BLM) or the Minerals Management Service (MMS) should have priority in collecting on an oil and gas bond. This was one of the issues addressed by our Bonding Task Force in their review of the present oil and gas bonding requirements. Robert Stack, assigned to your staff, participated in the Task Force. Following Task Force review, I made a tentative decision that in those few and infrequent cases where both the BLM and MMS are simultaneously collecting on the same bond, the BLM should have priority of collection. The reasons behind this tentative decision are outlined in the attached paper. However, since this policy would affect more than one agency, your concurrence is also requested.

Attachment

I Concur:

MAY 1 1987

Assistant Secretary - Land and Minerals Management — Date

/s/ J. Steven Griles

Issue:

Who should have priority in collecting on an oil and gas bond if there is both a royalty loss (MMS) and a loss from improper or no reclamation (BLM)?

Background:

The Federal oil and gas bond is intended to cover a lessee/operator's liability for both royalty payments and proper site reclamation including well plugging. The BLM is responsible for ensuring proper site reclamation while the MMS is responsible for royalty collection. This split responsibility can lead to problems when, as in a bankruptcy, both agencies attempt to collect on the same bond in order to protect their respective interests.

A similar issue recently arose when the MMS collected on a bond before notifying the BLM. BLM was unaware that the bond had been reduced below the required coverage. As such, the BLM was left in a position whereby the amount remaining was insufficient to cover any possible reclamation costs. This issue has been resolved by the BLM/MMS Steering Committee in a Memorandum of Understanding (MOU), whereby, the MMS has agreed to give BLM proper notification so that the BLM can then notify the lessee and surety to demand performance on the bond.

This MOU resolves the issue of notification between the two agencies but the issue of priority collection remains. In determining which, if either, of the two agencies should have such priority their respective liabilities and true potential losses must be examined.

The MMS is responsible for the collection of mineral revenues. Fifty percent of the mineral receipts from public domain lands are paid back to the States where the minerals are located. However, based, on informal discussions with the Solicitor's Office*, the MMS is likely not liable for money which was intended to be distributed to the States but is not collectable, as in the case of a bankruptcy where royalties are owed to the Government. The language at 30 U.S.C. 191 provides that "All money received from sales, bonuses, royalties . . ." shall be deposited into Treasury and 50 percent returned to the States. If no money has been "received", then the MMS is probably under no obligation to distribute the "50 percent foregone revenue" to the States.

*This matter has not been formally reviewed by the Solicitor's Office.

Therefore, when the MMS is faced with a loss of royalties it is basically a "paper loss" because it represents foregone revenues rather than an "out of pocket" expense. While the loss of such revenues is not to be discounted, the MMS does not face any loss of their budget or have to seek recovery of these foregone revenues from the Congress.

The BLM, however, must ensure that the site is properly reclaimed because, as a "land owner", it could be liable for accidents occurring on an improperly abandoned site. If no bond money is available, the BLM must pay for the reclamation work by providing "in house" materials and labor as well as hiring private contractors. As this type of work is not generally accounted for in the annual budget, the expenditures represent a real cost to the BLM which must seek additional appropriations to cover both the contracted work as well as to reimburse the BLM budget items from which the money was "borrowed."

Options

1. Assume the present agreement in the MOU for prior notification will also resolve any disputes regarding priority collection.

<u>Pro</u>

MOU provides possible mechanism to handle issue.

<u>Con</u>

Disputes would likely continue.
No clear policy for priority collections

2. Develop formula whereby bond would be allocated to BLM and MMS either on a straight percentage or prorated basis.

<u>Pro</u>

Would ensure both agencies receive bond money.
Prorated basis could take into account relative risk

<u>Con</u>

Ignores liability issue.
BLM would likely have out of pocket expense.

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3. Grant BLM the priority to attach and collect on the bond first, with any remaining money going to MMS.

Pro

Recognizes agency liability.
BLM would be protected against real losses.

Con

Opposition by MMS.
Probable "paper losses" to MMS.

4. Grant MMS the priority to attach and collect on the bond first, with any remaining money going to BLM.

Pro

MMS would recover "paper losses"
Would likely be favored by state governments because of revenue distribution.

Con

Would result in real costs to the BLM
Could result in BLM liability for acidents on improperly abandoned sites.

Recommendation:

We recommend Option 3.

Robt F Burford